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August 28, 2008

By Electronic Filing

The Honorable Douglas P. Woodlock
United States District Court
For the District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way
Boston, MA 02110

Re: Massachusetts Institute of Technology v. Harman International Industries, Inc.
C.A. No. 05-10990-DPW

Dear Judge Woodlock:

I write on behalf of Plaintiff MIT in brief response to Harman's counsel's letter submitted yesterday concerning the Federal Circuit's recent *In re Omeprazole Patent Litigation* opinion. Harman's counsel points to a few sentences in that decision which neither change nor clarify the Federal Circuit's jurisprudence on the issues in this case. In the interest of fairness, MIT believes it is important to point out the distinction between the Federal Circuit's short discussion of experimental use in *Omeprazole* and MIT's arguments here.

In *Omeprazole*, the Federal Circuit merely confirmed that experimental use cannot *negate* the operation of the public use bar following reduction to practice. The Court did *not* address the central issue in our case – whether evidence of experimentation remains *relevant* to determining if a use is a "public use" to begin with. MIT is not arguing negation here. Rather, MIT contends that a limited disclosure of a portion of the invention to a small number of colleagues clearly done for purposes of testing and developing the technology to perfect it before finishing a Ph.D. thesis was not a public use *in the first place*, because the "public" with access to the invention would not have been lead to believe that the technology was in the public domain.

Very truly yours,

Steven M. Bauer

cc: Counsel of Record (by ECF notification)